

**NOT FOR PUBLICATION**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

RITA BERRY,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 1996-0152
v.	)	
	)	
AMERICAN AIRLINES, INC., AMR CORP., and	)	
EXECUTIVE SERVICES, INC., d/b/a	)	
AMERICAN EAGLE,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

This matter comes before the Court on Plaintiff's Motion to Apply Virgin Islands law to the present action and Defendants' Motion for Summary Judgment incorporating Puerto Rico law. The Court finds that a hearing on these motions is not necessary.

The following facts are alleged in the instant action. Plaintiff, Rita Berry, was an airline passenger on an American Eagle flight from St. Croix to San Juan, en route to Rhode Island. Upon arrival at San Juan, Plaintiff was escorted with the other passengers from the tarmac by one of Defendants' employees to an escalator on the way to check in with their connecting flight to Rhode Island. As Plaintiff approached the escalator, Plaintiff told the American representative that she did not use escalators and asked if there was an elevator or stairway that she could use. The representative said "no" and kept moving toward the escalator. Plaintiff asked a second time if there was an elevator or staircase that she could use but the representative did not respond. Plaintiff boarded the elevator

behind her family members, and lightly held onto the moving railing with one hand. Halfway up the escalator, Plaintiff became dizzy and fell, and now alleges injuries and costs totaling more than \$75,000. This Court has jurisdiction in accordance with the principles of diversity established by 28 U.S.C. § 1332.

By Order dated February 22, 1999, this Court held that “since the injury occurred in Puerto Rico and in the absence of any evident reason why St. Croix has a more significant relationship with the action than Puerto Rico,” Puerto Rico law should apply to the substantive legal issues. The Court ordered Defendants and Plaintiff to resubmit their respective motion for summary judgment and opposition incorporating Puerto Rico law.<sup>1</sup> The Court also ordered the parties to file any objections to the use of Puerto Rico law at that time.

To begin, the Court is not persuaded by Plaintiff's objections to the application of Puerto Rico law, set forth in her Motion to Apply Virgin Islands law. As this Court has previously stated, in determining which state's law shall apply to the instant case, the Court looks to the Restatement (Second) Conflict of Laws. Section 146 of the Restatement provides in pertinent part:

In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

Restatement (Second) Conflict of Laws § 146. In determining whether some other state has a “more

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<sup>1</sup> Rather than filing an opposition to Defendants' Motion for Summary Judgment incorporating Puerto Rico law, as directed by the Court, Plaintiff filed an opposition incorporating Virgin Islands law.

significant relationship," a variety of contacts are considered. Courts consider "the place where the injury occurred, the place where the conduct causing injury occurred, the domicile, residence, nationality, place of incorporation and place of business of the parties, and the place where the relationship between the parties is centered." Benjamin v. Eastern Airlines, Inc., 18 V.I. 516, 520 (D.V.I. 1981) citing Restatement (Second) of Conflict of Laws § 145 (1971).

In Benjamin, this Court held that Puerto Rico substantive law should apply as Puerto Rico is the place where plaintiffs were injured: "Puerto Rico is the place where defendant's alleged negligent conduct occurred, and the Virgin Islands does not have more contacts that are more significant than those of Puerto Rico." Benjamin, 18 V.I. at 520. The Court found that the fact that the defendant did business in the Virgin Islands was not enough to establish a significant contact. In Benjamin, this Court further found that the only exclusive contact the Virgin Islands has with the action is the residency of the plaintiffs, and that this contact is not enough to warrant the application of Virgin Islands substantive law. Id. As in Benjamin, the only contact the Virgin Islands has with the instant action is the residency of Plaintiff.

Finally, the Court finds that the cases cited by Plaintiff to argue her position are inapplicable to the instant case. Plaintiff relies on Dent v. Cunningham, 786 F.2d 173 (3d Cir. 1986) and Schum v. Bailey, 578 F.2d 493 (3d Cir. 1978) to argue that her residency establishes the significant contact required to apply Virgin Islands law. Both cases involve whether or not to apply New Jersey's statute of limitations rather than that of the alternative state.

In Dent, the Third Circuit found that the fact that plaintiff was domiciled in New Jersey created

a significant interest by the State of New Jersey sufficient to require application of New Jersey substantive law. The court based its decision primarily on the fact that “New Jersey courts have long recognized a significant public interest in compensating their injured domiciliaries.” Dent, 786 F.2d at 176. Similarly, in Schum, the court concluded that New Jersey had substantial interests in the plaintiff's action such as to warrant application of New Jersey substantive law and apply its statute of limitations. The court states that “New Jersey cases have almost uniformly applied New Jersey law in instances in which the state had a significant compensation interest, viz., where the plaintiff was a New Jersey domiciliary.” Schum, 578 F.2d at 496.

Dent and Schum are distinguishable from the instant action, because both apply special New Jersey choice-of-law rules which are not the same as those followed in the Virgin Islands. New Jersey applies a governmental-interest approach using a two step analysis. See Schum, 578 F.2d at 496; see also Dent, 786 F.2d at 176. Under this analysis, “the court determines first the governmental policies evidenced by the laws of each related jurisdiction and second the factual contacts between the parties and each related jurisdiction. A state is deemed interested only where application of its law to the facts in issue will foster that state's policy.” Id.

The instant case is distinguishable in that the Virgin Islands follows the Restatement. 1 V.I.C. § 4.<sup>2</sup> As stated above, under the Restatement, actions for personal injuries are governed by the local law

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<sup>2</sup> Section 4 provides in relevant part that “the restatements of the law as approved by the American Law Institute . . . are the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.” 1 V.I.C. § 4.

of the state where the injury occurred, unless some other state has a more significant relationship.

Benjamin, 18 V.I. at 519-520; see also Restatement (Second) Conflict of Laws § 146 cmt. d. Only in rare cases is a jurisdiction other than that in which the conduct and injury occurred more significant.

See Restatement (Second) Conflict of Laws § 146 cmt. c. Further, Plaintiff's residency is insufficient to establish a "more significant relationship." Benjamin, 18 V.I. at 520. Therefore, because the alleged conduct and injury occurred in Puerto Rico and because the only contact the Virgin Islands has with the instant cause of action is Plaintiff's residency, the Court will apply Puerto Rico law to the instant action.

Having concluded that Puerto Rico substantive law applies to the instant case, the Court must now determine whether Puerto Rico's one-year statute of limitations, applicable to tort actions,<sup>3</sup> is substantive or procedural. See Benjamin, 18 V.I. at 520. "The general rule is that for the purposes of choice of law, a statute of limitations is procedural, and therefore the statute of limitations of the forum is governing." Id. (citing Restatement (Second) of Conflict of Laws § 142). However, this Court in Benjamin noted one exception to this rule:

"[A]n action will not be entertained in another state if it is barred in the state of the otherwise applicable law by a statute of limitations which bars the right and not merely the remedy." Restatement (Second) of Conflict of Laws § 143 (1971). . . . Thus, a court must investigate whether the applicable [sic] foreign statute of limitations so qualifies and conditions the cause of action that it extinguishes the right after a certain period of time, rather than simply barring the pursuit of the remedy in the foreign courts.

Benjamin, 18 V.I. at 520-521.

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<sup>3</sup> Under Puerto Rico's Civil Code, the statute of limitations for tort actions is "one year from the time the aggrieved person has knowledge thereof." Alamo v. Mangual Cleaning Services, Inc., 962 F. Supp 258, 261 (D.P.R. 1997) (citing P.R. Laws Ann. tit. 31, § 5298 (1990)).

In analyzing foreign statutes of limitations, the Virgin Islands has adopted the “foreign courts test,” as applied by the Third Circuit Court of Appeals. Id. at 522 (citing Goodwin v. Townsend, 197 F.2d 970, 972-73 (3d Cir. 1952) and Natale v. Upjohn Co., 356 F.2d 590, 593-94 (3d Cir. 1966)). Under this test, the Court “looks to the decisions of the courts of the foreign forum and adopts the foreign courts’ characterization of the applicable statute of limitations as either substantive, barring right, or procedural, barring the remedy.” Id. Under Puerto Rico law, one-year statutes of limitations are treated as substantive and not procedural. Torres-Gonzalez v. Miranda-Marchand, No. 97-1573, 129 F.3d 1252, 1997 WL 723310 (1<sup>st</sup> Cir. (Puerto Rico) Nov. 19, 1997) (citing Febo Ortego v. Superior Court, 102 P.R.R. 506, 509 (1974)). Thus, because Puerto Rico’s statute of limitations is substantive, it must be applied to the instant case. Benjamin 18 V.I. at 522.

In the instant case, Plaintiff fell on July 12, 1995. She knew that the woman she allegedly spoke with was an American flight attendant. Thus, she had “notice of her injury” and notice of the person whose alleged negligent conduct led to her fall on that day. See Alamo v. Mangual Cleaning Services, Inc., 962 F. Supp 258, 261 (D.P.R. 1997) (In applying Puerto Rico’s one-year statute of limitations, “[k]nowledge includes both notice of the injury and notice of the person who caused it.”) (internal quotations omitted). Plaintiff filed her action on November 6, 1996—approximately one year and four months after her fall. Therefore, under Puerto Rico’s one-year statute of limitations, Plaintiff’s claim is time-barred.

For the foregoing reasons, it is hereby

**ORDERED** that Plaintiff’s Motion to Apply Virgin Islands law is **DENIED**. It is further

**ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**. The instant action is dismissed as time-barred.

**ENTER:**

**DATED:** August \_\_, 2000

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RAYMOND L. FINCH  
U.S. DISTRICT JUDGE

**A T T E S T:**

Orinn F. Arnold

Clerk of Court

**by:** \_\_\_\_\_  
Deputy Clerk

cc: Lee Rohn, Esq.  
Daryl C. Barnes, Esq.